



U.S. Department of
Transportation

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST 97-2358 and UNDOCKETED STATEMENTS OF AUTHORIZATION

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: UNITED AIR LINES, INC., and VARIG, S.A.

Date Filed: October 30, 1997, as amended November 21, 1997

Relief requested: (1) Amendment to exemption granted Varig by Notice of Action Taken September 2, 1997, in this Docket, to conduct code-share operations between Brazil and Maui, Hawaii, on a code-share basis on flights operated by United, in order to substitute Cleveland, Ohio, for the code-share point Maui; (2) Exemption under 49 U.S.C. 40109 for Varig to conduct scheduled foreign air transportation of persons, property and mail between a point or points in Brazil, on the one hand, and Cincinnati, Ohio; Tampa, Florida; Pittsburgh, Pennsylvania; St. Louis, Missouri; and Salt Lake City, Utah, on the other, on a code-share basis on flights operated by United, and to coterminimize operations at those U.S. points with operations at Varig's other Department-authorized U.S. points; (3) Exemption for Varig to conduct scheduled foreign air transportation of persons, property and mail between a point or points in Brazil, on the one hand, and Boston, Massachusetts, on the other, via intermediate points, and to coterminimize Boston operations with operations at Varig's other Department-authorized U.S. points; and (4) Statement of authorization under 14 CFR Part 212 for Varig to display United's designator code on flights operated by Varig between Sao Paulo and Rio de Janeiro, Brazil, on the one hand, and Boston, Massachusetts, on the other (and to coterminimize Boston service with Varig's existing authority to conduct operations between points in Brazil and New York, New York). Varig stated that it would not carry local traffic between New York and Boston.

If renewal, date and citation of last action: Initial authorities.

Applicant representative: Connie O'Keefe (Varig) 202-822-9070 Joel Burton (United) 202-637-9130

Responsive pleadings: On November 14 and 26, 1997, the Massachusetts Port Authority answered in support of the October 30 and November 21 requests, respectively. On November 14, 1997, American Airlines, Inc., and TAM-Transportes Aereos Meridionais, S.A., answered the applicants' October 30 request. (Other than the Massachusetts Port Authority answer of November 21, no answers were filed to Varig's/United's amended request of November 21).

American/TAM opposed grant to the extent that such action would conflict with their pending request for additional code-share authority in Docket 97-2421, which was submitted to the Department on November 14, 1997.

DISPOSITION

Action: Approved

Action date: January 6, 1998

Effective dates of authority granted: January 6, 1998 through July 1, 1998 (coextensive with the duration of the exemptions and statements of authorization previously granted to Varig in this Docket).

Basis for approval (bilateral agreement/reciprocity): U.S.-Brazil Air Transport Agreement, as amended

Except to the extent exempted/waived, this authority is subject to the terms, conditions and limitations indicated:

x Foreign air carrier permit (Order 91-5-27)

(See Reverse Side)

Remarks:

By Memorandum of Consultations dated November 18, 1997, the U.S. and Brazilian governments agreed to increase from 20 to 25 the number of points in the territory of the other country to be served only under a code-share arrangement. To date, the Brazilian Government has selected 20 of those U.S. points, including the points requested here by Varig. By Notice of Action Taken September 2, 1997, in this Docket, the Department granted Varig's request to serve Maui, Hawaii, on a code-share basis only, and to coterminimize Maui operations with operations at Varig's existing Department-authorized U.S. points. However, by its instant request, Varig requested Department authority to substitute Cleveland for the code-share point Maui. By Notice of November 10, 1997, the Government of Brazil notified the Department that it substituted Cleveland for Maui, as a U.S. code-share only point. Therefore, we granted Varig's request to substitute Cleveland for Maui, and additionally to serve Cincinnati, Tampa, Pittsburgh, St. Louis and Salt Lake City, under code-share on flights operated by United, as noted above. Further, in the November 18, 1997, MOC, the representatives of the U.S. and Brazilian Governments agreed to recommend to their Governments that Annex 1 of the existing U.S.-Brazil Air Transport Agreement be amended, in part, to allow Brazilian carriers to serve the U.S. cotermininal point Boston, and that their respective governments apply the terms of the amended Annex on the basis of comity and reciprocity pending conclusion of the Agreement. On these bases, we found that grant of the above request was in the public interest and consistent with our bilateral relationship with Brazil. We determined that the United/Varig and American/TAM applications are in fact not mutually exclusive. We contemporaneously granted those portions of the American/TAM application for code-share-only authority consistent with the bilateral regime at this time and deferred action on the

balance, pending selection by Brazil of the code-share-only points requested. (see Notice of Action Taken January 6, 1998) Our grant of the requested coterminization authority does not, of course, permit the carrier to serve its code-share-only points with its own aircraft.

Finally, by their November 21 application, the applicants requested a motion for leave to file their application. We granted the motion.

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (i.e., the ticket), and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.